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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,211	06/13/2006	Richard Brian Perry	70336	7577
86344	7590	07/07/2010	<div style="display: flex; justify-content: space-between;"> <div style="flex: 1;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">EXAMINER</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">PRYOR, ALTON NATHANIEL</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">ART UNIT</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">PAPER NUMBER</div> </div> <div style="flex: 1; text-align: right;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">1616</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">MAIL DATE</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">DELIVERY MODE</div> </div> </div>	
			07/07/2010	PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/578,211	PERRY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALTON N. PRYOR	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 May 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) 8-22 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5/4/06</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 6-7 recites the broad recitation ratio, and the claim also recites ratio preferably from 1:20 to 10:1 (see claim 7 for same error) which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kliegman et al. (US 4328026; 5/4/82), Rodham et al. (US 2002/0025986; 2/28/02) or Itoh et al. (US 2005/0159599; 7/21/05) and Burns et al. (5035738; 7/30/91). Kliegman et al. teach a composition comprising a cyclic amide (abstract, column 2 lines 19-22).

Kliegman et al. teach that actives, including the herbicide paraquat, can be added to the composition (column 4 lines 18-32). Itoh et al. teach a composition comprising cyclic amides or cyclic amines such as 1,3-dimethyl-2-imidazolidone (abstract, paragraphs 91 and 92). Itoh et al. teach that actives, including the herbicide paraquat, can be added to the composition (paragraphs 108, 114-115). Rodham et al. teach a composition that can contain a water soluble amine including aminoethylpiperazine (paragraph 27) and a pesticide including the herbicide paraquat (paragraph 59). Neither of the prior art references exemplify a composition comprising paraquat and cyclic amides such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. In addition, neither of the prior art references teach a composition comprising paraquat plus a cyclic amine such as N-aminopropylmorpholine (APM). However, Burns et al. teach a herbicidal composition comprising N-aminopropylmorpholine (cyclic amine) and glyphosate (claim 1). It would have been obvious to combine the teachings of Kliegman et al., Rodham et al. or Itoh et

al. and Burns et al. to arrive at an invention comprising paraquat and N-aminopropylmorpholine. One would have been motivated to do this since all references individually teach a herbicidal utility. It is obvious to combine references directed to the same utility. Moreover, it would have been obvious to make an invention comprising paraquat plus cyclic amides such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. One would have been motivated to do this because the prior art references suggest the combination of cyclic amides and/or cyclic amines plus paraquat. With respect to the concentration of paraquat, an artisan in the field would have been expected to determine the optimum paraquat concentration. One would have been motivated to do this in order to make an invention that would have been effective as a herbicide without destroying desirable plants.

***Election Status***

The elected invention comprising paraquat and aminopropylmorphilline is not allowable. See rejection above.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/

Primary Examiner, Art Unit 1616